

148 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

SEP II, LLC

Docket No. ER14-1775-002

ORDER GRANTING MARKET-BASED RATE AUTHORIZATION AND REQUEST
FOR WAIVERS

(Issued September 22, 2014)

1. In this order, we grant SEP II, LLC (SEP II) authority to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the Southwest region, effective September 23, 2014, as requested. Additionally, we grant SEP II's request for waiver of the Commission's requirements to file an Open Access Transmission Tariff (OATT), to establish and maintain an Open Access Same-Time Information System (OASIS), and to comply with the Commission's Standards of Conduct. We also grant SEP II's request for other waivers commonly granted to market-based rate sellers, except as noted herein.

2. Additionally, we find that SEP II meets the criteria for a Category 2 seller in the Southwest region and is so designated. SEP II must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order No. 697.¹

¹ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 848-850, *clarified*, 121 FERC ¶ 61,260 (2007) (Clarification Order), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

I. Background

3. On April 25, 2014, as amended on June 17, 2014 and July 3, 2014, pursuant to section 205 of the Federal Power Act (FPA),² SEP II filed an application for market-based rate authority with an accompanying tariff providing for the sale of electric energy, capacity, and certain ancillary services at market-based rates in the Southwest region.³

4. SEP II states that, following the Commission's approval on April 24, 2014 of the application filed pursuant to FPA section 203 in Docket No. EC14-71-000,⁴ it will acquire from its affiliate, Mesquite Solar 1, LLC (Mesquite Solar), an undivided interest in certain generator interconnection facilities in Maricopa County, Arizona and will become a party to the ANPP Hassayampa Switchyard Interconnection Agreement (Hassayampa Interconnection Agreement).⁵ SEP II further states that the interconnection facilities are currently jointly owned as tenants-in-common by SEP II's affiliates, Mesquite Power, LLC (Mesquite Power) and Mesquite Solar, and by a non-affiliate, Salt River Project Agricultural and Improvement District (Salt River Project).

5. SEP II represents that it holds real estate interests and permits associated with future development of solar photovoltaic generation near the Hassayampa switchyard. It explains that the interconnection facilities will provide SEP II with the ability to connect future generation projects to the Hassayampa switchyard. SEP II further states that it does not currently own or control any generation facilities.

² 16 U.S.C. § 824d (2012).

³ SEP II requests authorization to sell ancillary services in the market administered by California Independent System Operator Corporation (CAISO) as well as authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

⁴ *Mesquite Solar 1, LLC*, 147 FERC ¶ 62,063 (2014).

⁵ SEP II April 25 Filing at 3 (citing *Arizona Public Serv. Co.*, 137 FERC ¶ 61,031 (2011) (accepting the Hassayampa Interconnection Agreement amendment reflecting Mesquite Solar as an additional party and expanding interconnection capacity by 700 megawatts (MW)) and *Arizona Public Serv. Co.*, Docket No. ER13-1328-000 (June 18, 2013) (delegated letter order) (accepting the Hassayampa Interconnection Agreement amendment reflecting shared ownership with Salt River Project)). SEP II states that it anticipates that the Hassayampa Interconnection Agreement will be further amended at the appropriate time to reflect SEP II's acquisition of the interconnection facilities.

6. SEP II states that the interconnection facilities it will acquire as a tenant-in-common consist of a collector substation and 230 kilovolt (kV) generation-tie line approximately four miles in length, a 230 kV bus, two 230 kV lines each terminating at individual three-phase autotransformer banks, two 230/500 kV three-phase autotransformer banks, two 500 kV lines approximately 0.3 miles in length connecting each autotransformer bank to the Hassayampa switchyard, and interconnection facilities in bays 5 and 8 of the Hassayampa switchyard. SEP II also states that these interconnection facilities are limited and discrete facilities that serve only to interconnect generating facilities to the Hassayampa switchyard and do not form an integrated transmission network.

7. Additionally, SEP II requests that the Commission waive the requirements under Order Nos. 888⁶ and 890⁷ and section 35.28 of the Commission's regulations⁸ to file an OATT, the requirements under Order No. 889⁹ and Part 37 of the Commission's

⁶ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸ 18 C.F.R. § 35.28 (2014).

⁹ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

regulations¹⁰ to establish an OASIS, and the requirements under Order Nos. 889, 2004,¹¹ and 717,¹² and Part 358 of the Commission's regulations¹³ to comply with the Standards of Conduct with respect to its interconnection facilities.

8. SEP II states that it is an indirect wholly-owned subsidiary of Sempra Energy, a public utility holding company based in San Diego, California. SEP II notes that Sempra Energy wholly owns Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E). SEP II further states that SDG&E owns transmission facilities and that operational control of those facilities is exercised by CAISO, which has an OATT on file with the Commission.

II. Notice of Filing

9. Notices of SEP II's filings were published in the *Federal Register*,¹⁴ with interventions and comments due on or before July 24, 2014. None was filed.

¹⁰ 18 C.F.R. pt. 37 (2014).

¹¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155, at P 16 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007).

¹² *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

¹³ 18 C.F.R. pt. 358 (2014).

¹⁴ 79 Fed. Reg. 25,124 (2014); 79 Fed. Reg. 35,748 (2014); 79 Fed. Reg. 40,747 (2014).

10. Notice of SEP II's request for blanket authorization under Part 34 of the Commission's regulations was separately published in the *Federal Register*,¹⁵ with interventions or protests due on or before May 19, 2014. None was filed.

III. Discussion

11. As discussed below, we will grant SEP II's request for authorization to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates in the Southwest region,¹⁶ and we will accept its market-based rate tariff, effective September 23, 2014, as requested. We will also grant SEP II's request for certain waivers.

A. Market-Based Rate Authorization

12. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁷

1. Horizontal Market Power

13. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁸ The Commission has stated that passage of both screens establishes a rebuttable presumption

¹⁵ 79 Fed. Reg. 25,129 (2014).

¹⁶ We note that SEP II is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements to offer ancillary services to its own customers. If SEP II seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

¹⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁸ *Id.* P 62.

that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.¹⁹

14. SEP II represents that it does not own or control any generation; however, its ownership of the interconnection facilities will allow it to connect future generating facilities to the Hassayampa switchyard, to which the generation facilities of SEP II's affiliates, Mesquite Power and Mesquite Solar, are also interconnected. SEP II has provided the pivotal supplier and wholesale market share screens for the CAISO market and the Salt River Project balancing authority area, where its affiliates own generation, consistent with the requirements of Order No. 697.²⁰

15. SEP II's horizontal market power screens demonstrate that SEP II passes both the pivotal supplier and wholesale market share screens in the CAISO market and the Salt River Project balancing authority area. We find that SEP II satisfies the Commission's requirements for market-based rate authority regarding horizontal market power when the Commission-accepted Simultaneous Transmission Import Limit (SIL) study results are taken into consideration for those markets.²¹

2. Vertical Market Power

16. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved

¹⁹ *Id.* PP 33, 62-63.

²⁰ SEP II states that it relies on previous data submitted by its affiliates in the CAISO market and the Salt River Project balancing authority area. Specifically, SEP II indicates that it relies on attachments contained in the Notice of Change in Status filed by Sempra U.S. Gas & Power, LLC, on behalf of Mesquite Solar, on October 21, 2013 in Docket No. ER11-3987-004, which was accepted by delegated letter order on April 8, 2014. *Sempra U.S. Gas & Power, LLC*, Docket No. ER11-3987-004 (Apr. 8, 2014) (delegated letter order). SEP II maintains that the use of more recent data would not result in a significantly higher market share because conditions would not materially change. *See Clarification Order*, 121 FERC ¶ 61,260 at P 12.d.

²¹ *See Public Service Company of New Mexico*, 146 FERC ¶ 61,126, at P 2 and Appendix A (2014) (SIL Study Order). In the SIL Study Order, the Commission stated that it will use these SIL values when examining updated market power analyses for the Southwest region.

OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²²

17. In this case, as discussed more fully below, the Commission will grant SEP II's request for waiver of the requirement to have an OATT on file for its interconnection facilities.²³ In addition, although SEP II's affiliate SDG&E owns transmission facilities, SEP II states that operational control of SDG&E's transmission facilities is exercised by CAISO, and the use of those assets is governed by CAISO's OATT. SEP II states that all other transmission facilities owned by it and its affiliates are limited and discrete facilities necessary to interconnect their generation facilities to the electric grid and that such facilities have either received OATT waivers or have requests for waivers pending with the Commission.²⁴

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁵ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for new generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁶ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into

²² Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²³ A generator lead line is a transmission facility. *See* 16 U.S.C. §§ 796(23), 824(a)-(b) (2012). SEP II is subject to the requirement under Order Nos. 888 and 890 to file an OATT, or seek a waiver of the requirement to file an OATT, unless and until it receives a request for transmission service. *See Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 24 (2009) (noting that the fact that the facilities merely tie a generator to the grid does not render a line exempt from the Commission's regulation of transmission facilities). *See also Evergreen Wind Power III, LLC*, 135 FERC ¶ 61,030, at P 15 n.18 (2011).

²⁴ SEP II states that in addition to its pending request for waivers for its interconnection facilities, Broken Bow Wind II, LLC also has a waiver request pending at the Commission. That waiver request was subsequently granted in *Broken Bow Wind II, LLC*, 148 FERC ¶ 61,052 (2014).

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 440.

²⁶ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

the relevant market and will not erect barriers to entry into the relevant market.²⁷ The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁸

19. Regarding other barriers to entry, SEP II represents that it is affiliated with certain entities that own or control intrastate natural gas transportation, storage, or distribution facilities.²⁹ SEP II also represents that it and its affiliates have demonstrated control over certain sites for generation capacity development. SEP II states that none of these sites are located in areas that have a scarcity of alternatives for possible market entrants, and that such control does not raise a concern about SEP II raising barriers to entry. Furthermore, SEP II commits to file any necessary quarterly site control reports with the Commission in accordance with Commission rules applicable to entities with market-based rate authority.

20. Finally, consistent with Order No. 697, SEP II affirmatively states that it has not and will not erect barriers to entry in the relevant geographic market.³⁰

21. Based on SEP II's representations, we find SEP II satisfies the Commission's requirements for market-based rates regarding vertical market power.

B. Waiver Requests

1. Waiver of Order Nos. 888, 889, and 890

22. SEP II seeks waiver of the requirements to file an OATT, establish and maintain an OASIS, and abide by the Standards of Conduct with respect to the interconnection

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁸ *Id.* P 446.

²⁹ SEP II details the interests of these affiliates in Attachment A of its April 25, 2014 filing. Given that SEP II does not identify any inputs to electric power production that it owns, we interpret this to mean it owns no such interests. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

³⁰ We interpret this statement to apply to SEP II and its affiliates, and our authorizations herein are predicated on SEP II complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

facilities that it owns. In support, SEP II represents that the interconnection facilities described in the instant application are limited and discrete facilities used solely to accommodate connection to the transmission grid. SEP II represents that the interconnection facilities do not form an integrated transmission network.

23. Order Nos. 888 and 890 and section 35.28 of the Commission's regulations require public utilities that own, operate, or control facilities used for the transmission of electric energy in interstate commerce to file an OATT. Order No. 889 and Part 37 of the Commission's regulations require public utilities to establish and maintain an OASIS. Order Nos. 889, 2004, and 717 and Part 358 of the Commission's regulations require public utilities to abide by certain Standards of Conduct.³¹ In prior orders, the Commission has enunciated the standards for exemption from some or all of the requirements of Order Nos. 888, 889, and 890.³² The Commission has stated that the criteria for waiver of the requirements of Order No. 890 and Order No. 2004 are unchanged from those used to evaluate requests for waiver under Order Nos. 888 and 889.³³ Order No. 717 did not change those criteria.³⁴

24. The Commission may grant requests for waiver of the obligation to file an OATT to public utilities that can show that they own, operate, or control only limited and discrete transmission facilities (facilities that do not form an integrated transmission grid), until such time as the public utility receives a request for transmission service. Should the public utility receive such a request, the Commission has determined that the public utility must file with the Commission a *pro forma* tariff within 60 days of the date of the request, and must comply with any additional requirements that are effective on the date of the request.³⁵

³¹ Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,590; Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 16; Order No. 717, FERC Stats. & Regs. ¶ 31,280 at P 313.

³² See, e.g., *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996) (*Black Creek*); *Entergy Miss., Inc.*, 112 FERC ¶ 61,228, at P 22 (2005) (*Entergy*).

³³ See *Alcoa Power Generating Inc.*, 120 FERC ¶ 61,035, at P 3 (2007); *Alcoa Power Generating Inc.*, 108 FERC ¶ 61,243, at P 27 (2004).

³⁴ See Order No. 717, FERC Stats. & Regs. ¶ 31,280 at PP 31-33.

³⁵ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

25. The Commission has also determined that waiver of the requirement to establish an OASIS and abide by the Standards of Conduct would be appropriate for a public utility if the applicant: (1) owns, operates, or controls only limited and discrete transmission facilities (rather than an integrated transmission grid); or (2) is a small public utility that owns, operates, or controls an integrated transmission grid, unless other circumstances are present that indicate that a waiver would not be justified.³⁶ The Commission has held that waiver of Order No. 889 will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation (for OASIS waivers) or an entity complains that the public utility has unfairly used its access to information about transmission to benefit the utility or its affiliate (for Standards of Conduct waivers).³⁷

26. Based on the statements in SEP II's application, we find that its interconnection facilities qualify as limited and discrete. The facilities will be used solely by SEP II to connect its future generating facilities to the grid.³⁸ Accordingly, we will grant SEP II waiver of the requirements of Order Nos. 888 and 890 and section 35.28 of the Commission's regulations to have an OATT on file. However, if SEP II receives a request for transmission service, it must file with the Commission a *pro forma* OATT within 60 days of the date of the request.³⁹

27. The Commission will also grant SEP II waiver of the requirements of Order No. 889 and Part 37 of the Commission's regulations with respect to OASIS and Order Nos. 889, 2004, and 717 and Part 358 with respect to the Standards of Conduct. We note that

³⁶ *Id.* Although the Commission originally precluded waiver of the requirements for OASIS and the Standards of Conduct for a small public utility that is a member of a tight power pool, in *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 2-3 (2011) (*Black Hills*), the Commission explained that membership in a tight power pool is no longer a factor in the determination for waiver of Standards of Conduct. Moreover, *Black Hills* did not affect waivers based on a public utility disposing of no more than 4 million megawatt hours (MWh) annually.

³⁷ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota Municipal Power Agency*, 79 FERC ¶ 61,260, at 62,127 (1997) (*Central Minnesota*); *Easton Utils. Comm'n*, 83 FERC ¶ 61,334, at 62,343 (1998) (*Easton*)).

³⁸ We note that our waivers granted herein do not cover the portion of the facilities owned by the other tenants-in-common.

³⁹ *Black Creek*, 77 FERC ¶ 61,232 at 61,941.

SEP II's waiver of the requirement to establish an OASIS will remain in effect until the Commission takes action in response to a complaint to the Commission that an entity evaluating its transmission needs could not get the information necessary to complete its evaluation.⁴⁰ Likewise, SEP II's waiver of the Standards of Conduct will remain in effect unless and until the Commission takes action on a complaint by an entity that SEP II has unfairly used its access to information to unfairly benefit itself or its affiliates.⁴¹

2. Other Waivers, Approvals, and Authorizations

28. SEP II also requests the following waivers and authorizations: (1) waiver of the filing requirements of subparts B and C of Part 35 of the Commission's regulations, except sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) waiver of the accounting and other requirements of Parts 41, 101, and 141 of the Commission's regulations, except sections 141.14 and 141.15; and (3) blanket authorization under section 204 of the FPA⁴² and Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability.

29. The Commission will grant the requested waivers and authorizations consistent with those granted to other entities with market-based rate authorizations.⁴³

⁴⁰ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343).

⁴¹ *Entergy*, 112 FERC ¶ 61,228 at P 23 (citing *Central Minnesota*, 79 FERC ¶ 61,260 at 62,127; *Easton*, 83 FERC ¶ 61,334 at 62,343). SEP II must notify the Commission if there is a material change in facts that affect its waiver within 30 days of the date of such change. *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

⁴² 16 U.S.C. § 824c (2012).

⁴³ We note that the Commission has examined and approved the continued applicability of the waiver of its accounting and reporting requirements in Parts 41, 101, and 141 of the Commission's regulations, as well as the continued applicability of the blanket authorization for the issuance of securities and the assumption of liabilities in Part 34 of the Commission's regulations. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 984-985 (regarding waiver of Parts 41, 101, and 141) and PP 999-1000 (regarding blanket approval under Part 34). However, waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 C.F.R. Part 101 to the extent necessary to carry out their responsibilities under Part I of the FPA. We further

(continued...)

Notwithstanding the waiver of the accounting and reporting requirements, the Commission expects SEP II to keep its accounting records in accordance with generally accepted accounting principles.

3. Reporting Requirements

30. An entity with market-based rate authorization must file an Electric Quarterly Report (EQR) with the Commission, consistent with Order Nos. 2001⁴⁴ and 768,⁴⁵ to fulfill its responsibility under FPA section 205(c)⁴⁶ to have rates on file in a convenient form and place.⁴⁷ SEP II must file EQRs electronically with the Commission consistent with the procedures set forth in Order No. 770.⁴⁸ Failure to timely and accurately file an

note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23 n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA"))).

⁴⁴ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

⁴⁵ *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

⁴⁶ 16 U.S.C. § 824d(c) (2012).

⁴⁷ *See Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

⁴⁸ Order No. 770, FERC Stats. & Regs. ¶ 31,338.

EQR is a violation of the Commission's regulations for which SEP II may be subject to refund, civil penalties, and/or revocation of market-based rate authority.⁴⁹

31. Additionally, SEP II must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁵⁰

32. In Order No. 697, the Commission created two categories of sellers.⁵¹ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.⁵² Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.⁵³

33. SEP II represents that it meets the criteria for Category 2 seller status in the Southwest region.

34. Based on SEP II's representations, we designate SEP II as a Category 2 seller in the Southwest region. SEP II must file an updated market power analysis for the Southwest region in compliance with the regional reporting schedule adopted in Order

⁴⁹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2014). Forfeiture of market-based rate authority may require a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁵⁰ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2014).

⁵¹ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

⁵² 18 C.F.R. § 35.36(a) (2014).

⁵³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

No. 697.⁵⁴ The Commission reserves the right to require an updated market power analysis at any time for any region.⁵⁵

The Commission orders:

(A) SEP II's market-based rate tariff is hereby accepted for filing, effective September 23, 2014, as requested, as discussed in the body of this order.

(B) Waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, are hereby granted.

(C) Waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to hydropower licensees is not granted with respect to licensed hydropower projects. Waiver of Parts 41 and 141 of the Commission's regulations is hereby granted, with the exception of sections 141.14 and 141.15.

(D) Blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability is hereby granted. SEP II is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of SEP II, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of SEP II's issuance of securities or assumptions of liability.

(F) SEP II's request for waiver of the requirements to file an OATT, to establish and maintain an OASIS, and to comply with the Standards of Conduct is hereby granted, as discussed in the body of this order.

⁵⁴ *Id.*

⁵⁵ *See id.* P 853.

(G) SEP II is hereby required to file EQRs in compliance with Order No. 2001. If the effective date of SEP II's market-based rate tariff falls within a quarter of the year that has already expired, SEP II's EQRs for the expired quarter are due within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.